

By: Woolley

H.B. No. 3352

A BILL TO BE ENTITLED

AN ACT

1
2 relating to municipal civil service for firefighters and police
3 officers in certain municipalities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 143.057(d), Local Government Code, is
6 amended to read as follows:

7 (d) If the appealing fire fighter or police officer chooses
8 to appeal to a hearing examiner, the fire fighter or police officer
9 and the department head, or their designees, shall first attempt to
10 agree on the selection of an impartial hearing examiner. If the
11 parties do not agree on the selection of a hearing examiner on or
12 within 10 days after the date the appeal is filed, the director
13 shall immediately request a list of seven qualified neutral
14 independent third party hearing examiners [~~arbitrators~~] from the
15 American Arbitration Association or the Federal Mediation and
16 Conciliation Service, or their successors in function. The fire
17 fighter or police officer and the department head, or their
18 designees, may agree on one of the seven neutral independent third
19 party hearing examiners [~~arbitrators~~] on the list. If they do not
20 agree within five working days after the date they received the
21 list, each party or the party's designee shall alternate striking a
22 name from the list and the name remaining is the hearing examiner.
23 The parties or their designees shall agree on a date for the
24 hearing.

1 SECTION 2. Section 143.1014, Local Government Code, is
2 amended to read as follows:

3 Sec. 143.1014. NOTICE REQUIREMENT FOR CERTAIN MEETINGS OR
4 HEARINGS. (a) The department shall provide to a fire fighter or
5 police officer written notice of the time and location of a meeting
6 or hearing not later than the 48th hour before the hour on which the
7 meeting or hearing is held if the meeting or hearing is:

8 (1) related to an internal departmental or other
9 municipal investigation of the fire fighter or police officer at
10 which the fire fighter or police officer is required or entitled to
11 be present, including an interrogation;

12 (2) related to a grievance filed by the fire fighter or
13 police officer under Sections 143.127 through 143.134; or

14 (3) an opportunity to respond to charges against the
15 fire fighter or police officer before the department terminates the
16 fire fighter's or police officer's employment.

17 (b) A fire fighter or police officer may waive the written
18 notice prescribed by this section.

19 SECTION 3. Sections 143.1015(a), (e), (f), and (i), Local
20 Government Code, are amended to read as follows:

21 (a) A written notice of [~~An~~] appeal by a fire fighter or
22 police officer to the commission from an action for which an appeal
23 or review is provided by this chapter is sufficient if the fire
24 fighter or police officer files it with the commission within 15
25 days after the date the action occurred. In an appeal provided by
26 this chapter the commission shall render a decision in writing
27 within 60 days after it received the written notice of appeal,

1 unless the provisions of Section 143.1017(d) have been invoked by
2 the fire fighter or police officer. If the commission does not
3 render a decision in writing within 60 days after the date it
4 receives written notice of the appeal, the commission shall sustain
5 the fire fighter's or police officer's appeal.

6 (e) The hearing relating to the reasons for the fire
7 fighter's or police officer's subpoena request shall be held on the
8 date set for the original appeal hearing. If the commission
9 overrules the subpoena request at the hearing:

10 (1) the commission may hear the fire fighter's or
11 police officer's appeal on that date; or

12 (2) if the commission finds that justice is served by a
13 continuance, the commission shall:

14 (A) reschedule the hearing to the commission's
15 next regularly scheduled meeting; and

16 (B) give the fire fighter or police officer at
17 least 15 days notice of that date.

18 (f) If the commission sustains the fire fighter's or police
19 officer's subpoena request at the hearing, the commission shall:

20 (1) reschedule the appeal hearing date to the
21 commission's next regularly scheduled meeting; and

22 (2) give the fire fighter or police officer at least 15
23 days notice of that date.

24 (i) A municipal employee who is subpoenaed to appear as a
25 fact witness in any appeal of a disciplinary decision is entitled to
26 applicable pay for the time the employee is required to be present
27 at the hearing. Witnesses whose testimony relates primarily to the

1 character or reputation of the employee shall be limited by the
2 hearing examiner or commission if the testimony is repetitious or
3 unduly prolongs the hearing. If the hearing examiner or commission
4 limits the number of character or reputation witnesses, additional
5 witness statements may be presented by affidavit. The character
6 witnesses are not entitled to applicable pay for the time they are
7 required to be present at the hearing.

8 SECTION 4. Section 143.1016, Local Government Code, is
9 amended by amending Subsections (a), (d), (e), (h), (i), and (k) and
10 adding Subsection (l) to read as follows:

11 (a) In addition to the other notice requirements prescribed
12 by this chapter, the letter of disciplinary action issued to a fire
13 fighter or police officer must state that in an appeal of an
14 indefinite suspension, a suspension, a promotional pass over, or a
15 recommended demotion, the appealing fire fighter or police officer
16 may elect to appeal to a [~~an independent third party~~] hearing
17 examiner instead of to the commission. The hearing examiner must be
18 an independent third party hearing examiner. The letter must also
19 state that if the fire fighter or police officer elects to appeal to
20 a hearing examiner, the person waives all rights to appeal to a
21 district court except as provided by Subsection (j).

22 (d) This subsection applies only if the parties have not
23 established a selection procedure in an agreement pursuant to
24 Subchapter J. If the appealing fire fighter or police officer
25 chooses to appeal to a hearing examiner, the fire fighter or police
26 officer and the department head or their designees shall first
27 attempt to agree on the selection of an impartial hearing examiner.

1 If the parties do not agree on the selection of a hearing examiner
2 on or within 10 days after the date the appeal is filed and no motion
3 to consolidate is filed under Subsection (1) [~~(k) of this section~~],
4 the director shall on the next work day following notice that the
5 parties have failed to agree on a selection of a hearing examiner
6 request a list of seven qualified neutral hearing examiners
7 [~~arbitrators~~] from the American Arbitration Association or the
8 Federal Mediation and Conciliation Service or their successors in
9 function. The fire fighter or police officer and the department
10 head or their designees may agree on one of the seven neutral
11 hearing examiners [~~arbitrators~~] on the list. If they do not agree
12 within 25 days after the date the appeal was filed, each party or
13 the party's designee shall on the 25th day after the appeal was
14 filed alternate striking a name from the list and the name remaining
15 is the hearing examiner. In the event that the 25th day falls on a
16 Saturday, Sunday, or a legal holiday, then the parties shall strike
17 the list the next work day. The parties or their designees shall
18 agree on a date for the hearing that is within the time period
19 prescribed by Subsection (e). In the event that the director does
20 not request the list of seven qualified neutral hearing examiners
21 [~~arbitrators~~] within the time prescribed by this subsection or the
22 department head or his designee fails to strike the list within the
23 time prescribed by this subsection, the fire fighter or police
24 officer or his designee shall select the hearing examiner
25 [~~arbitrator~~] from the list provided. In the event that the fire
26 fighter or police officer or his designee fails to strike the list
27 within the time prescribed by this subsection, the department head

1 or his designee shall select the hearing examiner [~~arbitrator~~] from
2 the list provided.

3 (e) The appeal hearing must begin within 60 days after the
4 date the appeal is filed and shall begin as soon as the hearing
5 examiner can be scheduled. If the hearing examiner cannot begin the
6 hearing within 45 calendar days after the date of selection, the
7 fire fighter or police officer may, within two days after learning
8 of that fact, call for the selection of a new hearing examiner using
9 the procedure prescribed by Subsection (d) or a procedure
10 established in an agreement adopted under Subchapter J. If the
11 appeal hearing is not begun within 60 days after the date the appeal
12 is filed, the indefinite suspension, suspension, promotional pass
13 over, or recommended demotion is upheld and the appeal is withdrawn
14 if the fire fighter or police officer is not ready to proceed, and
15 the appeal is sustained if the department head is not ready to
16 proceed. In computing the 60-day period, a period of delay not to
17 exceed 30 calendar days because of a continuance granted at the
18 request of the department head or his representative or the fire
19 fighter or police officer or his representative on good cause being
20 shown, or because of the unavoidable unavailability of the hearing
21 examiner on the date of the hearing, or because of the pendency of a
22 motion to consolidate with another hearing as provided in
23 Subsection (1) [~~(k) of this section~~] is excluded. In no event may a
24 hearing examiner grant a continuance beyond 30 days in an
25 indefinite suspension. A hearing examiner may grant a continuance
26 beyond the 30-day period upon good cause being shown in a
27 disciplinary suspension unless the fire fighter or police officer

1 has another disciplinary action pending.

2 (h) In an appeal that does not involve an expedited hearing
3 procedure, the hearing examiner shall make a reasonable effort to
4 render a decision on the appeal within 30 days after the date the
5 hearing ends or the legal briefs are filed. The hearing examiner's
6 inability to meet the time requirements imposed by this section
7 does not affect the hearing examiner's jurisdiction, the validity
8 of the disciplinary action, or the hearing examiner's final
9 decision.

10 (i) The hearing examiner's fees and expenses are shared
11 equally by the appealing fire fighter or police officer and by the
12 department. The costs associated with the service of a subpoena on
13 ~~[of]~~ a witness must be ~~[are]~~ paid by the party who calls the
14 witness.

15 (k) In an appeal of an indefinite suspension, a suspension,
16 a promotional pass over, or a recommended demotion, each appealing
17 fire fighter or police officer or the appealing fire fighter's or
18 police officer's representative shall be entitled to the selection
19 of a hearing examiner pursuant to Subsection (d) ~~[of this section]~~
20 to hear the case.

21 (l) The fire fighter, police officer, department head, or a
22 representative of any of those may, within 10 days of the date they
23 received notice of the appeal, file a motion with a copy to the
24 opposing side to consolidate the case with that of one or more other
25 fire fighters or police officers where the charges arise out of the
26 same incident. The motion to consolidate may be agreed to in
27 writing and filed with the director. If a motion to consolidate the

1 cases is filed and not agreed to, a hearing examiner shall be chosen
2 pursuant to the provisions of Subsection (d) [~~of this section~~] to
3 hear the motion. The decision of the hearing examiner shall be
4 final and binding as to the issue of consolidation. The hearing
5 examiner chosen to hear the motion to consolidate shall not hear the
6 case, and the provisions of Subsection (d) [~~of this section~~] shall
7 be used to choose the hearing examiner with the day the decision is
8 rendered being the equivalent of the date the appeal was filed.

9 SECTION 5. Section 143.361(b), Local Government Code, is
10 amended to read as follows:

11 (b) A written agreement ratified under this subchapter
12 preempts all contrary local ordinances, executive orders,
13 legislation, or rules adopted by [~~the state or~~] a political
14 subdivision or agent of the state, such as a personnel board, a
15 civil service commission, or a home-rule municipality.

16 SECTION 6. The changes in law made by this Act to Sections
17 143.057(d), 143.1015, and 143.1016, Local Government Code, apply
18 only to an appeal initiated by a firefighter or police officer on or
19 after the effective date of this Act. An appeal initiated before
20 the effective date of this Act is governed by the law in effect
21 immediately before the effective date of this Act, and the former
22 law is continued in effect for that purpose.

23 SECTION 7. The change in law made by this Act to Section
24 143.1014, Local Government Code, applies to a notice required to be
25 provided under that section on or after the effective date of this
26 Act. A notice required to be provided before the effective date of
27 this Act is governed by the law in effect immediately before the

1 effective date of this Act, and the former law is continued in
2 effect for that purpose.

3 SECTION 8. This Act takes effect September 1, 2007.